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08/487282

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/487,283	06/07/95	EVANS	M ALX-152.1CIP

EXAMINER

18M1/0401  
SETH A FIDEL  
ALEXION PHARMACEUTICALS  
25 SCIENCE PARK  
SUITE 360  
NEW HAVEN CT 06511

ATTY/PEL, P PAPER NUMBER

1806  
DATE MAILED:

6  
04/01/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on 11/28/97
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 30 DAYS month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-15 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) \_\_\_\_\_ is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) 1-15 are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been
- received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

Serial No. 08/487283  
Art Unit 1806

## DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
  - I. Claims 1-12, drawn to C5-specific antibodies, nucleic acids encoding said antibody and hosts and methods of producing said antibody, classified in Class 435, subclass 70.21 and 172.2 and Class 530, subclass 387.1, 388.1.
  - II. Claim 13, drawn to an isolated oligopeptide, classified in Class 530, subclass 300.
  - III. Claim 14, drawn to a method of identifying an anti-C5 antibody by screening with an oligopeptide, classified in Class 435, subclass 7.1.
  - IV. Claim 15, drawn to a method of treatment with C5-specific antibodies, classified in Class 424, subclass 1301..
2. Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process such as immunopurification procedures or diagnostic assays (or detection assays).
3. Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process such as affinity purification procedures or diagnostic assays (or detection assays).
4. Inventions III and IV are different methods of use. These inventions require different ingredients, process steps and endpoints. Therefore they are novel and unobvious in view of each other and are patentably distinct.
5. Inventions I and II are different products. Antibodies and peptides are distinct because their structures and modes of action are different. Therefore they are novel and unobvious in view of each other and are patentably distinct.
6. Inventions I and III as well as II and IV are not related as products and a method of use. Therefore, they are novel and unobvious in view of each other and are patentably distinct.

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7. Because these inventions are distinct for the reasons given above and the search required for any group from Groups I-IV is not required for any other group from Groups I-IV and Groups I-IV have acquired a separate status in the art as shown by their different classification and divergent subject matter, restriction for examination purposes as indicated is proper.
8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).
9. Papers related to this application may be submitted to Group 1800 by facsimile transmission. Papers should be faxed to Group 1800 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 308-4242 or (703) 305-7939.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gabel whose telephone number is (703) 308-3997. The examiner can normally be reached Monday through Thursday from 7:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lila Feisee can be reached on (703) 308-2731. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1800 receptionist whose telephone number is (703) 308-0196.

Phillip Gabel, Ph.D.  
Patent Examiner  
Group 1800  
March 31, 1997

